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No. 677

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

UNITED STATES OF AMERICA, *Petitioner*

v.

SAMUEL L. PALMER AND STANDARD PARTS & EQUIPMENT CORPORATION, *Respondents*

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Opening Statement

Petitioner has asked for writs of certiorari to the United States Court of Claims to review two decisions of such court. The respondent herein is concerned only with the petition as it involves Palmer et al. hereinafter referred to as *Palmer*, and while it is believed that both petitions should be denied the present brief will be confined to the *Palmer* case.

The jurisdiction of this court is not questioned but the summary of the questions presented appearing on page 2 of the petition is entirely too sketchy, at least insofar as the statement as to the sole difference between the Palmer patent in suit and the prior art is concerned. The patent in suit is adequately described in Appendix B, page 65 et seq. which is Commissioner

Davis' description of such patent adopted by the full court and while the so-called "bean bag" support and the "normally empty bag" are important elements of the claim and in fact may be termed the "crux" of the invention as pointed out by Commissioner Davis in Appendix B, page 55; it is the *combination as a whole* as set forth in the Palmer claim quoted on pages 66 and 67 of Appendix B which constitutes Palmer's invention and the *Palmer* record as summarized by Commissioner Davis (App. B, page 60) shows that there was no prior art which fulfills the need which is supplied by Palmer's emergency landing light known as the "Bekon" (App. B, pages 55, 56, 62, 70 and 71).

Also while it is recognized that the case of *Graham v. John Deere Co.*, 381 U.S. 1, 148 USPQ 459, cited at the bottom of page 2 of the petition is a landmark decision to be followed in determining obviousness under 35 USC 103, nevertheless the case of *United States v. Adams*, 383 U.S. 39, 148 USPQ 479 is equally authoritative and is believed to more specifically apply to the *Palmer* case since, in the *Adams* case as in *Palmer*, Government experts expressed disbelief in the Adams' invention until the merits of such invention were proved beyond a doubt by the adoption of the invention by the Signal Corps. Similarly the record shows that while the Government's expert in the present proceeding expressed skepticism as to the practicability of the Palmer device Col. Elkins, a military pilot and at one time Commanding Officer of Andrews Air Force Base, praised the Palmer device, the "Bekon", which he found to be the answer to a

long felt need, as set forth in Commissioner Davis' report in Appendix B, pages 55, 56, 62, 70 and 71. Thus while the present record shows that the Government had engaged in extensive research in the field of emergency landing lights it was Palmer and not those engaged in Government research who produced the Bekon that fulfilled the long felt need as set forth by Col. Elkins. This is clear evidence of invention as was recognized in the Adams case.

Petitioner's Asserted Reasons for Granting the Writ Not Valid

Petitioner on page 8 of its brief asserts that the *Garrett* and *Palmer* cases represent a tendency on the part of the Court of Claims to apply a laxer standard than that prescribed in the *Graham* case, and that this alleged trend if uncorrected would have a serious fiscal effect on the Government and may substantially and unwarrantably impair competition in the procurement of Government contracts.

Respondent takes issue both with the premise that the Court of Claims has not followed the standard prescribed in Graham and with the conclusion that the alleged trend may have serious fiscal impact on the Government. To the contrary respondent asserts that the Court, at least insofar as the *Palmer* case is concerned, has clearly followed the teachings of the *Graham* case as amplified by the *Adams* case and that far from having an adverse fiscal effect upon the Government the practice of the Court of Claims in allowing an inventor a reasonable compensation for the appropriation of his patent rights by the Govern-

ment provides an incentive to inventors which saves the Government much more in development and research programs than would be the case if such compensation were denied. This has been recognized by Congress in statutory provision for suit in the Court of Claims 28 USC 1498.

Referring now to petitioner's contention that the Court of Claims has been more lax in its application of the guidelines set forth by the Supreme Court than have the various Circuit Courts of Appeals it is significant to note that the *Graham* case had its origin in the Fifth and Eighth Circuit Courts of Appeal, whereas the *Adams* case had its origin in the Court of Claims of the United States, and whereas in the *Graham* case the decision of the Fifth Circuit Court of Appeals was *overruled*, in the *Adams* case the decision of the Court of Claims was *upheld* thus showing *approval* of the application of the law by the Court of Claims and *disapproval* of the application of the law by the Fifth Circuit. Certainly it must be assumed, unless clearly proved to the contrary, that this same Court of Claims still applies the rules as set forth by the Supreme Court as represented by the *Graham* case, the *Adams* case and other more recent decisions, as well as its earlier decisions.

That the *Graham* case was considered by the Court and by Commissioner Davis and its principles applied is apparent from that portion of the Court's decision affirming the opinion of Commissioner Davis appearing in Appendix B, wherein on page 53 and again on

page 60 the *Graham* case is referred to and its application to the *Palmer* case discussed. The following is quoted from page 60 to show how fully the *Graham* case was considered:

> "Whether the claim defines an invention obvious under 35 U.S.C. §103 requires factual analysis of (1) the scope and content of the prior art, (2) the differences between the prior art and the claim in issue, and (3) the level of ordinary skill in the pertinent art. Secondary considerations such as commercial success, satisfying felt need, and failure of others may have relevance. *Graham v. John Deere Co., supra; Martin-Marietta Corp. v. United States*, 179 Ct.Cl. 70, 373 F.2d 972, 153 USPQ 206 (1967). To show the prior art, defendant relies on 14 patents and some earlier military specifications which teach, among other things, a variety of battery-operated emergency lights. (Findings 12-19). None of the prior art lights, however, use plaintiffs' idea of a flexible gag support base in which ballast can readily be added to or removed from the bag. In fact, the prior devices show that despite no dearth of activity in the art of portable emergency lights, particularly during and just after World War II, no one came up with Palmer's simple but highly practical idea until 1953, even though the problem of adequate aircraft emergency lights is as old as flying itself. This is persuasive evidence of unobviousness. Also pertinent is the fact that for the most part, the prior art devices are relatively complicated and expensive to make and repair, and are not adaptable for use over a wide range of operating conditions. Under the circumstances, therefore, the simplicity of plaintiffs' light is a hallmark of its unobviousness. *Aronson*

v. Toy Devices, Inc., 1 F.2d 91 (3d Cir. 1924); *vanVeen v. United States*, 181 Ct.Cl. 884, 386 F.2d 462, 156 USPQ 403 (1967).

Applying the three principal factors of the *Graham* case to the *Palmer* case Commissioner Davis and the full Court came to the conclusion that a patentable invention was present. In addition to the *primary* factors the *secondary considerations* of commercial success, satisfying long felt need and failure of others were considered in arriving at patentability. Thus one of the factors in determining patentability of the Palmer device was that even though there had been considerable activity in the art of portable emergency lights no one came up with Palmer's simple but highly practical idea until 1953 even though the problem of adequate emergency lights was as old as flying itself. Similarly in applying the principles of the *Graham* case this court in the *Adams* case held the Adams patent valid. The evidence considered by the Commissioner and by the Court of Claims and summarized in the *Palmer* decision fully refutes petitioner's contention that Palmer's device involved only advances which are *obvious* in the light of the prior art, for the reason that the prior art devices were not suitable for Palmer's intended purpose and were relatively complicated to make and repair whereas Palmer's device is simple and highly practical. While the Palmer device may now seem obvious in the light of Palmer's disclosure such device was not obvious at the time the invention was made which is what the statute specifies (35 USC 103).

Simplicity is Evidence of Invention

Petitioner seems to contend that *simple* expedients are not patentable. This is not true since simplicity has long been recognized as evidence of unobviousness as is pointed out in the portion of the Palmer decision quoted above and as has long been recognized by this Court. See *Potts v. Creager*, 155 U.S. 597, 608 and *Loom v. Higgins*, 105 U.S. 580, 591, and *Diamond Rubber Co. v. Connecticut Tire Co.*, 220 U.S. 428, at 434-435.

It is also clear from the portion of the court's decision in the *Palmer* case quoted above that the effect of the Palmer patent is not "to remove existent knowledge from the public domain or to restrict free access to materials already available" as contended by petitioner on page 8 of its brief, since both the court and Commissioner Davis found on the basis of voluminous evidence that Palmer's solution of the problem of an adequate emergency light was *not* available in the prior art. Thus the cases of *Anderson's Black Rock Inc. v. Pavement Salvage Co.*, 396 U.S. 57 and *Lear, Inc. v. Adkins*, 395 U.S. 653 cited by petitioner are not pertinent to the present situation.

Further on page 10 petitioner cites the case of *Bellow v. Park Sherman Co.*, 131 F.2d 599 (C.A. 7), certiorari denied, 318 U.S. 765, 55 USPQ 310, in support of its contention that the Palmer device is obvious in view of the prior art. This contention is rebutted in the *Palmer* case by the fact that a need for a suitable aircraft emergency light had long existed in spite of the large array of existing portable emergency

lights and bean bag supports for baby bottles and ash trays but in spite of the long felt need no one had ever arrived at Palmer's solution of the problem. No such showing was made in the *Bellow* case. Moreover in *Bellow* the court held that Bellow had claimed his invention so broadly as to be covered by the prior art. The following is quoted:

> "It is said that the prior art is not akin to that of ash trays and that Bellow, therefore, is not limited by its teaching. But it will be observed that the patentee did not so restrict his claimed invention. He recommended its application to any other article designed to stand or rest on an irregular surface. Inasmuch as he made the broad assertion, we think that, in designing a combination for steadying a receptacle resting upon irregular surfaces, he is clearly bound by all instruction in the making of bases for 'other articles' mentioned by him."

In the present case the Palmer claim is not readable on the prior art under 35 USC 102 and this was clearly set forth in the decision of Commissioner Davis of the Court of Claims. Thus it is clear that Palmer's claims is not met by the prior art under 35 USC 102 nor is his invention obvious in view of the prior art under 35 USC 103, though the invention when completed is so simple it may seem obvious in retrospect but was not obvious at the time the invention was made as is apparent from the fact that others were seeking fulfillment of the problem of satisfactory aircraft emergency lights and the Palmer device fulfilled the long felt need.

The Government's Use of Palmer Device is Significant from the Standpoint of Obviousness

On page 10 petitioner complains because Commissioner Davis has pointed out that the Government had used the patented article in significant numbers. This is particularly important when taking into consideration the fact that the Palmer device (the "Bekon" as it was known commercially) was developed by Palmer *independently* of any Government research program and when brought to the attention of Col. Elkins, Commanding Officer of Andrews Air Force Base, was at once recognized as fulfilling a long felt need (App. B, pages 70 and 71). Thereafter in 1959 it was made the subject of a military specification (App. B, page 55) and *thousands* of "Bekons" have been furnished to defendant for use of all three military services. A particular significance of the above resides in the fact that others, including the Government itself, had been seeking a solution of the problem of adequate aircraft emergency lights but no one prior to Palmer had come up with an adequate solution of the problem as stated by Commissioner Davis. It is further significant that in the *Adams* case as in the *Palmer* case the fact that the Government after having been approached by Adams at an earlier date entered into contracts with others for procurement of the Adams devices or the devices covered by the Adams patent. This is set forth in the decision in the *Adams* case as the basis for the conclusion that the Adams invention was not obvious and if this court thought it worthwhile to include this fact in its opinion certainly petitioner cannot be heard to

complain that Commissioner Davis and the Court of Claims thought the fact of the Government's use of the Palmer device in large quantities was sufficiently significant to include in the *Palmer* case. Thus while the *mere* existence of copying may not show patentability where a patented article is not involved or where the patent has been held invalid, appropriation of Palmer's invention under the circumstances of the present case clearly implies invention as was recognized by this court in the *Adams* case. As to commercial success, the *Graham* case has recognized that this is a factor to be considered as relevant, along with other factors, in determining obviousness or the lack thereof. As previously pointed out both Commissioner Davis and the full court considered the three principal factors recited in the *Graham* case for determining patentability whereas the principal fators showing lack of obviousness as called for in the *Graham* case were found not to be present in the cases of *Anderson's Black Rock Inc. v. Pavement Salvage Co.* and *A & P Tea Co. v. Supermarket Corp.*, cited by petitioner on page 10 if its petition. As to the case of *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 230, also cited on page 10, this case merely holds that an *unpatented* device or one covered by an *expired* or *invalid* patent may be copied with impunity. There is nothing in the *Sears* case which holds that copying a patented article does not imply patentability and, in fact, the *Adams* case, previously referred to, clearly shows that this is a factor to be considered in determining patentability.

The Blumcraft and Stukenborg Decisions Not Pertinent

Petitioner on pages 11 and 12 of its brief has cited two sets of cases decided since the *Graham* case in which patents held valid by the Court of Claims have subsequently been held invalid by another Federal Court. It is submitted that these two cases are by no means representative and certainly provide no adequate basis for petitioner's complaint that the Court of Claims has not been following the guidelines set forth by *Graham*.

In the *Blumcraft* cases a design patent was involved in which the invention resided in the ornamental features of the device and the question involved was whether the design was obvious in view of the prior art. The Court of Claims after applying the recognized tests as to patentability including those set forth in the *Graham* case, held the patent valid. The Fourth Circuit Court of Appeals on the other hand in applying the same tests found the patent invalid. Since the degree of novelty of the ornamentation of a design was a matter of opinion based largely on the aesthetic tastes of the individual, and since it has long been recognized as to matters of taste there can be no valid dispute, it is not surprising that two courts both conscientiously applying the same guidelines but having different tastes should arrive at different conclusions as to the validity of a design patent and certainly the *Blumcraft* cases do not provide an adequate support for petitioner's contention that the Court of Claims has not been following the guidelines set forth

in the *Graham* case.

The *Stukenborg* cases are also not persuasive as to petitioner's contention that the Court of Claims has not been following the guidelines of the *Graham* case since in these cases the application of such guidelines was not even involved but instead a California District Court held invalid a patent which the Court of Claims had previously held valid but such holding was specifically stated to be in view of grounds which were *not* considered by the Court of Claims, and had it not been for this additional ground, the District Court indicated that it would have followed the decision of the Court of Claims.

Petitioner's Statistics Meaningless and Misleading

On page 12 of its brief petitioner has cited statistics purporting to show that different standards of invention have been applied by the Court of Claims on the one hand and by the Circuit Courts of Appeals on the other. This does not necessarily follow from the statistics as will be pointed out more fully hereinafter, but taking the statistics at face value they show a much larger variation within the respective circuits themselves than does their average, stated to be 27.9%, differ from the percent of cases upheld by the Court of Claims since the Graham decision, stated to be 60%. Thus considering the last table in Appendix C, page 79, it will be seen that the Eighth Circuit held no patents valid or 0%, while the Seventh Circuit held 48% valid and the Fifth Circuit held 43.9% valid.

Thus, if any revision of standards is necessary it would appear that the decisions of the Eighth Circuit should be revised as this court apparently regarded the Graham decision as constituting a judicial repeal of Section 8, Article I as well as the patent act of July 19, 1952 enacted in accordance with said Constitutional provision. Presumably in holding the patents in all sixteen cases which came before it invalid the Eighth Circuit did not take into consideration the fact that at the same time the *Graham* case was decided holding invalid the Graham patent No. 2,627,798 which had been held valid by the Fifth Circuit, the same court also decided the *Adams* case upholding the validity of Adams Patent No. 2,322,210 which had been held valid by the Court of Claims.

In addition to the record of the Eighth Circuit, the records of the First, Third and Tenth Circuits show zero percentage of patents since *Graham* held valid and infringed, which is well below the average of the Circuit Courts of Appeals as set forth in the table on page 79 of Appendix C as 20.1%. Also the other circuits which have found validity and infringement in certain cases, vary widely among themselves from 8.8% in the Ninth Circuit to 40% in the Seventh Circuit, a difference of over 30%. Thus, if as petitioner seems to imply, a set percentage of patents should be held invalid and a lesser percentage held valid, there should be no discrimination against one particular court, the Court of Claims and cases from the various circuits should be sampled from time to time to see if these percentages are being adhered to. Of course this court will do nothing of the kind and

merely to state the proposition is to recognize its impracticability and inequity. Certainly as long as the courts are to be given reasonable freedom in applying the patent law as interpreted by the Supreme Court in the *Graham* and other cases there will be differences of viewpoint in different courts in individual cases, which is as it should be. This is illustrated by the *Blumcraft* cases previously referred to and enumerated on page 11 of petitioner's brief wherein both the Court of Claims and the Fifth Circuit Court of Appeals carefully applied the tests laid down in the *Graham* case and came to different conclusions.

Referring again to the petitioner's contention on page 12 that the different percentages of patents upheld by the Court of Claims, on the one hand, and the average of the various courts of appeal on the other implies that different standards are being employed in application of the *Graham* case, it should be further pointed out that the circumstances in which suits for infringement arise within the Court of Claims, on the one hand, and the various courts of appeal on the other, are widely different and these differences are sufficient to explain the larger percentage of cases in which validity of the patent has been upheld by the Court of Claims. Thus, as set forth on page 13 of its brief petitioner concedes that in 1958 the Government "Abandoned its prior policy of giving preference in the award of contracts to patent owners regardless of its appraisal of the validity of the patent". This harsh rule obviously fails to take into consideration the presumption of validity of a patent as set forth in 35 USC 282 which provides that "A

patent shall be presumed valid". Thus while one other than the U.S. Government must carefully consider the presumption of validity before undertaking to use a patented device without settling with the patent owner, the Government is in no way deterred by this presumption. Accordingly it may be assumed that before one other than the U.S. Government will proceed to infringe a patent except in circuits such as the Third, Eighth and Tenth where the patent laws appear to have been considered to be substantially repealed by the Graham case, efforts will be made to purchase the patent, to avoid infringement, or to enter into a royalty agreement with the patent owner, before taking the risk of being sued for infringement and thus it is only in cases where the patent involved appears to be very weak that one would take the chance of being held for infringement with resulting damages, which in the case of willful infringement may be trebled. Thus, it is not the strong patents, whose validity cannot be attacked with likelihood of success, which come to the Circuit Courts of Appeals, except in those circuits which seldom uphold patent validity, but rather those relatively weak patents in which prior art or other grounds of invalidity are found to exist which were not considered by the Patent Office.

In the Court of Claims on the other hand the Government has no reason to fear an injunction and even if damages are assessed these are relatively low as compared with whose which may be assessed in a circuit court, which may include treble damages where the infringement is willful. Consequently even proc-

esses and devices covered by the strongest patents may be appropriated with impunity by the Government and it is only by reason of the well reasoned decisions of the Court of Claims in applying 28 USC 1498 that inventors are not discouraged entirely from making inventions which would be of use to the U.S. Government.

Thus, instead of the reasons advanced by petitioner for the larger percentage of patents held valid by the Court of Claims since *Graham* as compared to those held valid by the various courts of appeals, namely that a different standard of invention was being applied, it is respondent's contention that the higher percentage of patents held valid by the Court of Claims since *Graham* is because of the larger number of valid patents which came before the Court of Claims than those which came before the various circuit courts, due largely to the same harsh policies of the Government itself, set forth on pages 13 and 14 of petitioner's brief in failing to give due consideration to the validity of patents involved before awarding contracts to others than the patent owner. These same harsh policies may also explain the larger percentage of patents held valid by the Court of Claims since *Graham* than before *Graham*, since the effect of such policy adopted in 1958 would not be reflected in the decisions of the Court of Claims for many years afterward. This is because such policies do not become generally known at once and in addition the decisions of the Court of Claims may not be rendered for four to six years or even more after the infringement commences.

Court of Claims Standard of Patentability not "Lax" but Reasonable

Petitioner on page 13 of its brief improperly and without adequate proof, characterizes the standard of patentability of the Court of Claims as "lax" and, based on that characterization, contends that as a result of such "lax" standards the Government may be required to pay large sums in damages and that administrative settlement of patent claims would be influenced by the Government's and claimant's estimate of how the claimants would fare in the Court of Claims.

Respondent has already answered the charge of "lax" standards of the Court of Claims by showing that the court since *Graham* has consistently applied the standards set forth in that case and that if a larger percentage of patents were held valid by such court since Graham than by the various Circuit Courts of Appeals the reason can be found in the very policies admitted by the Government of appropriating patentend devices without regard for the presumption of validity of such patents. Also it will be recalled that at the same time the Supreme Court was setting guidelines for the courts in the *Graham* case, it also decided the *Adams* case which originated in the Court of Claims and upheld the Adams patent while invalidating the Graham patent which had been held valid by the Fifth Circuit Court of Appeals.

Another case which the Supreme Court decided along with *Graham* and *Adams* also originated in the Eighth Circuit which had held valid the Scroggin

Patent No. 2,870,943. The decision of this court was reversed by the Supreme Court and the Scroggin patent held invalid.

Thus it is clear that the Supreme Court approved the standards of patentability in the *Adams* case but disapproved of the decisions of two circuit courts in the other two cases. Accordingly, to apply the term "lax" to the decisions of the same court (Court of Claims) after *Graham* is clearly unwarranted.

Petitioner understandably expresses concern over the effect of the decisions of the Court of Claims on its admittedly harsh procurement policy which on page 13 is stated to be appropriate any and all patented articles or processes without regard to their validity and attempt to settle all claims for the lowest possible sums. This was the policy adopted by the Government in the *Adams* case, where, after expressing doubt as to the operability of the Adams battery the Government later entered into contracts with various battery companies for its procurement without notifying Adams. Thus large sums of money were saved the Government at the expense of the inventor until Adams' rights were finally vindicated by the Court of Claims and the Supreme Court. Even greater sums would be saved if patent owners in general could be convinced that suits in the Court of Claims to recover the compensation provided for by Congress in 28 USC 1498 were but a futile gesture.

However, while the short range effect of such a policy of ruthless confiscation might save the Government substantial sums of money, the long term effect

would be disastrous and it would soon discourage inventions in which the Government might be interested and would require the expenditure of much greater sums, than those which might be saved by the Government, in research and development (see Appendix X). Even such research might not be productive as appears from the *Adams* case where the Government was trying to develop a satisfactory battery but found it necessary to confiscate instead the independently developed Adams battery. Also in the *Palmer* case the Government had developed many landing lights before Palmer, but none were found suitable for the intended purpose except the "Bekon" as stated by Col. Elkins of Andrews Air Force Base, Appendix B, pages 70 and 71.

The Petition Presents No Important Question of Law

The petitioner is merely asking this court to consider another case in which it thinks the standard of patentability has been misapplied, not only by the Commissioner of Patents, but by the Court of Claims as well (page 10). There was no regrouping of old elements, but the claim of the Palmer patent contains a new element in the combination, namely, "a normally empty flexible bag". This terminology was acceptable to the Commissioner of Patents, and it was, by amendment, the addition of this terminology during the prosecution of the patent application that resulted in the allowance of the claim of the Palmer patent. The term was also accepted by Commissioner Davis, the trial judge, and by the Court of Claims, per curiam. Petitioner vigorously opposed the use of the term in its motion for summary judgment, in its brief

after the trial and in its motion to alter judgment. The term is not unusual in patent law.

Conclusion

The petitioner has not given special and important reasons in support of its petition in accordance with Rule 19 of this Court. Accordingly, the petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Service of this Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Claims was made upon Petitioner by mailing three copies thereof by regular United States mail, postage prepaid, to Erwin N. Griswold, Solicitor General, U.S. Department of Justice, Washington, D.C., 20530, counsel for Petitioner, this 5th day of October, 1970.

Counsel for Respondent

APPENDIX X

From "Washington Post" for May 12, 1958:

U. S. PATENT OFFICE BANS STIR COURT

By James Clayton

Judge Warren E. Burger* of the United States Court of Appeals warned yesterday that the current attitude of the Patent Office and the Courts toward new developments in scientific fields may force the Government to take over more and more fields of research.

The attitude now prevailing, Burger said, imposes barriers to patents for new developments "are more stringent than contemplated either . . . by the Constitution or by Congress".

These barriers, he added, "hardly seem the way to encourage maximum incentive for those engaged in research and invention".

Burger's comments were elicited by a routine patent case in which the Court of Appeals here upheld the Patent Office's refusal of a patent for a drug sold as Buscopan. Developed by a German firm, the drug is used to ease muscular spasms.

The Patent Office ruled that a patent was barred because the drug was anticipated by patents granted in Germany in 1903 and in the United States in 1942. It said that any one skilled in the art would have found the development of Buscopan to be "obvious".

To this, Burger asked, "but is it not also plain that

*Now Chief Justice U S. Supreme Court

this 'obvious' application . . . was not sufficiently clear for the chemists of Germany . . . and of the world, to discover this 'obvious' truth for so many years?"

"This lack of hospitality toward patents" the judge said, "is suggested in argument, frequently made here by counsel for the Patent Office that Buck Rogers comic strips which depict rockets, jets and the space age will . . . be cited as prior anticipation, when making applications for such devices . . .". Patent Office lawyers have already used Rube Goldberg cartoons in such arguments against the granting of patents, he noted.

CERTIORARI
DENIED
N.C.R.